

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Federal-State Joint Board on Universal Service

Petition of CenturyTel of Central Wisconsin,  
LLC and Telephone USA of Wisconsin, LLC  
for Waiver of Section 36.612(a)(3) of the  
Commission's Rules

CC Docket No. 96-45

**Petition of CenturyTel of Central Wisconsin, LLC and Telephone USA of Wisconsin, LLC  
for Waiver of Section 36.612(a)(3)**

CenturyTel of Central Wisconsin, LLC and Telephone USA of Wisconsin, LLC (collectively the "Wisconsin LECs") hereby petition the Commission for a limited waiver of the filing deadline contained in Section 36.612(a)(3) of the Commission's rules, to permit these carriers to receive safety valve support for the period July 1, 2005 through June 30, 2006.

**Background**

In 2000, CenturyTel, Inc. ("CenturyTel"), through the Wisconsin LECs, purchased a total of approximately 133,000 lines in 77 exchanges in Wisconsin. In two separate transactions with Verizon, CenturyTel formed CenturyTel of Central Wisconsin through the purchase of 70,000 access lines in 42 exchanges, and formed Telephone USA of Wisconsin through the purchase of an additional 62,650 lines in 35 additional exchanges.

Because the Wisconsin LECs have made substantial investment in their telephone plant to reverse years of neglect by the prior owner, loop costs for these companies have increased substantially. At the time of the purchase, the local exchange facilities were in very poor condition. Local dialup Internet access was available in only a few of the exchanges, and

voice mail was available in none. After the close of the transactions, the Wisconsin LECs invested heavily to increase service quality and provide new services. Today, customers of the Wisconsin LECs have access to more and better quality services than ever before.

As a result, each of the Wisconsin LECs was (and remains) eligible for universal service support provided by the Commission's safety valve mechanisms established by the Commission's *Rural Task Force Order*.<sup>1</sup> Safety valve support is available for investment an acquiring carrier makes in rural network infrastructure, and expenses it incurs, and is calculated based on the increase in a rural carrier's loop cost expense adjustment provided under Section 36.631 of the Commission's rules, 47 C.F.R. § 36.631.

To qualify for safety valve support, each of these companies established an index year, consisting of the first four full calendar quarters following the closing date of the acquisition, which in each case was the period from October 1, 2000 through September 30, 2001. As provided in Section 36.612(a)(3) of the Commission's rules, 47 C.F.R. § 36.612(a)(3), the Wisconsin LECs reported data for this period to the National Exchange Carrier Association ("NECA") and the Universal Service Administrative Corporation ("USAC") on March 28, 2002. In March, 2003 and March 2004, the Wisconsin LECs reported to the Commission cost data for the prior October 1-September 30 fiscal year established for safety valve purposes, in addition to the calendar year data required to be filed each July under section 36.611 of the Commission's rules, 47 C.F.R. § 36.611.

As a result, the Wisconsin LECs have been receiving safety valve support for the past two years. In July, 2005, however, USAC stopped providing safety valve support to the

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<sup>1</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45 and Report and Order in CC Docket No. 0-256, FCC 01-157, 16 FCC Rcd 11244, at paras. 97-106 (2001).

Wisconsin LECs, a fact that CenturyTel discovered when it received its August statement from NECA. On August 31, 2005, CenturyTel received its NECA Cash Disbursement Statement for July 2005 cash which showed adjustments reducing Safety Valve Support for the Wisconsin LECs to \$0. On the same day, CenturyTel sent an E-mail to USAC customer service questioning the large reduction in Safety Valve Support. On September 9, 2005, a USAC representative initially told CenturyTel that there had been a problem communicating the required data between USAC and NECA, that no action was necessary by CenturyTel, and that the Wisconsin LECs would receive retroactive safety valve support beginning in October.

When the Wisconsin LECs did not receive the promised retroactive support in October, additional investigation revealed another problem. Inadvertently, the Wisconsin LECs did not submit fiscal year cost information to NECA for the October 1, 2003-September 30, 2004 fiscal year, which was due in March, 2005. Although this filing is otherwise optional, safety valve recipients whose index year does not correspond to one calendar year are required to file an additional quarterly report showing data for the fiscal year corresponding to the original safety valve index year, in this case October 1 through September 30.

For required filings, such as the required annual cost report due each July 31 pursuant to section 36.611 of the Commission's rules, carriers, including CenturyTel, are accustomed to a process under which NECA sends out reminders in advance of the due date, as well as forms to use for the filing. If, for some reason, a carrier fails to file by the deadline, NECA invariably contacts the carrier shortly thereafter to discuss the matter. No such process is in place with respect to quarterly updates, even those that are required as a condition of the carrier's receipt of safety valve support.

As a result of the Wisconsin LECs' failure to file the March 2005 quarterly update, USAC is no longer providing them with safety valve support. In this petition, the

Wisconsin LECs seek a waiver of the filing deadline in Section 36.612(a)(3) to permit them to provide the necessary fiscal year cost information to USAC, to enable them to receive safety valve support for the affected period.

### **Discussion**

Section 1.3 of the Commission's rules permits the Commission to waive any of its rules "for good cause shown," 47 C.F.R. § 1.3. The Commission may waive its rules when particular facts make strict compliance inconsistent with the public interest and, in making this determination, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>2</sup> In granting a waiver, the Commission generally must determine, therefore: (1) that special circumstances warrant a deviation from the general rule; and (2) that such deviation will serve the public interest.<sup>3</sup>

The Wisconsin LECs' request meets both prongs of this test. *First*, special circumstances justify a waiver. Section 36.612(a) and 54.305(d)(2) interact in a confusing manner. Section 36.612(a)(3) of the Commission's rules permits, *but does not require*, each rural ILEC to update its yearly cost information on a quarterly basis.<sup>4</sup> Rural ILECs that choose not to make these quarterly filings receive high cost loop support based on the annual calendar year data contained in the mandatory report filed pursuant to Section 36.611.<sup>5</sup>

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<sup>2</sup> *Sandwich Isles Communications, Inc. Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary and Sections 36.611, and 69.2(hh) of the Commission's Rules*, CC Docket No. 96-45, Order, DA 05-1355, 20 FCC Rcd 8999 (Wir. Comp. Bur. 2005), at para. 8.

<sup>3</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

<sup>4</sup> 47 C.F.R. § 36.612(a).

<sup>5</sup> 47 C.F.R. § 36.611.

Section 54.305(d)(2) of the Commission's rules can turn this optional quarterly update into a vitally important mandatory filing.<sup>6</sup> Section 54.305(d)(2) permits an ILEC to establish a fiscal index year for safety valve purposes based on the first four complete calendar quarters following the ILEC's purchase of the supported exchanges, even if these do not all fall within the same calendar year. The ILEC's safety valve support in such a case is based on year-over-year changes between the ILEC's costs in the fiscal index year and its costs in subsequent corresponding fiscal years. To receive safety valve support, therefore, a rural ILEC must in subsequent years file the otherwise optional quarterly update under Section 36.612(a) that corresponds to the four calendar quarters it originally used as the safety valve index year.

CenturyTel is aware of no other rural ILEC that, after establishing a fiscal index year for safety valve purposes other than a complete calendar year and making substantial network investments in reliance on safety valve support, was then denied this support based on its administrative oversight in failing to file the necessary cost report – particularly one that is optional for all other purposes. Granting this waiver would not subject the Commission to scores of similar requests from similarly-situated carriers, nor could the relief the Wisconsin LECs seek be better implemented through a rule change. In short, the Wisconsin LECs seek to correct their own administrative oversight to permit them to continue receiving safety valve support upon which they relied when they made their substantial investment to rehabilitate their acquired networks and that, at the time of their error, they had already been receiving for two years.

*Second*, the public interest would be better served by a deviation from the Section 36.612(a)(3) filing deadline. The Commission established its safety valve support mechanism precisely to encourage new investment by rural carriers in acquired exchanges that may have

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<sup>6</sup> 47 C.F.R. § 54.305(d)(2).

been neglected by their former owners.<sup>7</sup> The Commission recognized that its prior rule, strictly limiting support for acquired exchanges to the amount the seller was receiving before the sale, harmed rural America by creating disincentives to such investment. As the Commission concluded, the former rule “may discourage rural carriers from acquiring high-cost exchanges from carriers with low average costs and may prevent rural carriers from receiving support for new investments in recently-acquired high-cost exchanges.”<sup>8</sup>

Furthermore, the Commission sought to maximize the potential benefits of safety valve support for rural America by permitting a rural carrier to establish the safety valve index year quickly after acquiring the exchanges in question. While rejecting calls for the Commission to use the seller’s final year of operation as an index year, the Commission recognized that delay in establishing the index year could blunt the safety valve mechanism’s incentives for rural carriers and delay realization of the attendant benefits for rural customers. Therefore, the Commission permitted the acquiring carrier to establish its index year beginning with the first full calendar quarter after the acquisition closes. As the Commission explained, this rule permits a carrier to “establish its index year expense adjustment earlier and therefore potentially [the carrier] could begin receiving safety valve support earlier.”<sup>9</sup>

The safety valve mechanism has benefited customers of the Wisconsin LECs tremendously. When the Wisconsin LECs acquired these exchanges, the network was in

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<sup>7</sup> *Rural Task Force Order*, 16 FCC Rcd 11244, at paras. 93-94 (“[C]ustomers in rural areas should not be ‘doomed’ to poor service because the selling carrier has limited access to universal service support funds . . . . The Rural Task Force therefore recommended that the Commission establish an appropriate ‘safety valve’ mechanism, which would enable rural carriers acquiring access lines to receive additional support over a period of five years reflecting ‘post-transaction investment made to enhance the infrastructure of and improve the service in these exchanges.’”) (*quoting* Rural Task Force Recommendation at 29).

<sup>8</sup> *Rural Task Force Order*, 16 FCC Rcd 11244, at para. 97.

<sup>9</sup> *Rural Task Force Order*, 16 FCC Rcd 11244, at para. 99.

substantial disrepair and could not support delivery of modern, high-quality services that today's customers demand. Since they acquired these exchanges, these carriers have invested \$130 million to deploy new switching equipment, and have incurred substantial additional expenses to maintain and improve existing facilities. As a result, since the Wisconsin LECs acquired these exchanges, their customers have, for the first time, gained access to new and improved services, including voice mail and other vertical services. In addition, as a result of their improvements to the outside plant, customers now have access to DSL services that offer broadband Internet access. Service quality has reached new highs, and trouble reports have declined by 59 percent.

Failure to grant a waiver would undermine the incentives to invest in rural networks that the safety valve mechanism was designed to create. In making these investments, the Wisconsin LECs relied on the anticipated support they would receive from the Commission's safety valve mechanism support and, in fact, the Wisconsin LECs were projected to receive roughly \$1 million each in safety valve support this year. If the Commission now withdraws this support, it would send precisely the wrong signal to rural carriers and rural America. The Wisconsin LECs would be forced to consider rate increases or cost cutting measures that could impact service quality. It could have greater difficulty financing future acquisitions of lines or network investments, because potential investors would associate greater risk with the universal service support revenue stream. And, CenturyTel would become more hesitant to make investments supported by the safety valve mechanism or, at the very least, to establish an index year for safety valve purposes other than the calendar year. This hesitation would dampen and delay the benefits to rural America that the safety valve mechanism was intended to create.

Thus, the Commission's policy objectives would in this case be better served by a waiver than they would by strictly adhering to the Section 36.612(a)(3) filing deadline. The

Commission recently recognized in an analogous case that strict adherence to the deadline for filing data necessary to receive an entire year of universal service support would create a substantial hardship for a small carrier and its customers by impacting the carrier's ability to continue providing service at just, reasonable, and affordable rates and its ability to continue to provide quality service to consumers.<sup>10</sup> Especially given that CenturyTel has a long history of timely submission of the data NECA and USAC require in administering the universal service program, neither the Wisconsin LECs nor their customers should be made to suffer this hardship.

Having actually made substantial network investments in reliance on the availability of safety valve support, equity dictates that the Wisconsin LECs should not now be denied such support based on their failure merely to file a timely ministerial cost report. To the contrary, it would better serve the public interest for the Commission to reaffirm its commitment to supporting investment in rural America by granting this waiver to permit the Wisconsin LECs to make the required filing and to receive safety valve support based on the cost data contained in that filing.

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<sup>10</sup> *Federal-State Joint Board on Universal Service; Alliance Comm's Coop., Inc. and Hills Tel. Co., Inc., East Ascension Tel. Co., LLC, Columbus Tel. Co.* Petitions for Waiver of Section 54.301 Local Switching Support Data Submission, CC Docket No. 96-455, Order, DA 05-3024 (Wir. Comp. Bur., rel. Nov. 22, 2005), at para. 8 (“[I]f a carrier misses the annual deadline, it will not receive funding for an entire year. As such, the loss of LSS has a much greater impact on a small carrier's capacity to ensure that consumers have and maintain access to service at just, reasonable, and affordable rates than the loss of other types of universal service support. Indeed, the loss of LSS for an entire calendar year in these instances may have a significant effect on the rates that Petitioners charge consumers. Likewise, the loss of LSS may adversely affect Petitioners' ability to continue to provide quality service to consumers.”); *see also Federal-State Joint Board on Universal Service; Citizens Communications and Frontier Communications Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket No. 96-45, Order, DA 05-2829 (Wir. Comp. Bur., rel. Oct. 27, 2005), at paras. 7-8.

### **Conclusion**

For the foregoing reasons, the Wisconsin LECs hereby request a waiver of the filing deadline contained in Section 36.612(a)(3). Special circumstances justify this waiver, and a grant of the waiver would serve the public interest.

Respectfully submitted,

CENTURYTEL OF CENTRAL WISCONSIN, LLC  
TELEPHONE USA OF WISCONSIN, LLC

John F. Jones  
Vice President, Federal Regulatory  
CENTURYTEL, INC.  
Nolan A. Moullé, Jr.  
Vice President, Revenues  
CENTURYTEL SERVICE GROUP, LLC  
100 CenturyTel Park Drive  
Monroe, Louisiana 71203

*/s/ Richard Cameron*

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Karen Brinkmann  
Richard R. Cameron  
LATHAM & WATKINS LLP  
555 Eleventh Street, N.W., Suite 1000  
Washington, D.C. 20004-1304  
(202) 637-2200

*Their Attorneys*

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